IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 401 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDULAL JETHALAL JAISWAL

Versus

INCOME TAX OFFICER

Appearance:

1. Special Criminal Application No. 401 of 2003
PARTY-IN-PERSON for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
MR KM PARIKH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 28/11/2003

CAV.JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA FOR THE COURT)

1 This is an application wherein order dated 31/3/2003 made by the Court of Chief Judicial Magistrate, Vadodara below Exh.12 filed in Criminal Case Nos.2915/1993 to 2922/1993 has been challenged.

2 The petitioner has appeared as party-in-person and contended that the impugned order dated 31.12.2003 is ultravires or inconsistent or in derogation of the funda mental rights under Articles 13, 14, 19 & 21 of the Constitution of India and Sections 144A, 279(1A), 276C, 276CC, 277, 271 & 273A of the Income Tax Act, 1961 and Sections 294, 295 & 296 of the Code of Criminal Procedure 1973 and Sections 120B & 193 of the Indian Penal Code.

3 The petitioner moved an application (Exh.12) in the Court of Chief Judicial Magistrate, Vadodara on 12.6.2002 seeking dismissal of Criminal Case Nos. 2915/1993 to 2922/1993 filed against the petitioner and also a joint prayer by the petitioner and his wife Smt.Pushpaben Chandulal Jaiswal that gold ornaments weighing about 1318 grams be returned to Smt.Pushpaben Chandulal Jaiswal by the Income Tax Department. It was further prayed that the Income Tax Department be ordered to compensate Smt.Pushpaben Chandulal Jaiswal to the tune of Rs.25 lacs. By order dated 31.3.2003 the aforesaid application (Exh.12) came to be rejected.

4 The petitioner has been heard and in relation to the prayer for quashing the criminal cases various submissions as made in MCA No.89/03 have been made. As the said submissions have been dealt with in a separate order of even date it is not necessary to repeat the contentions and the order of the Court in relation to the said contentions.

5 The contention regarding direction to the Income Tax Department to return the gold ornaments has been dealt with by the Trial Court by stating that firstly, though the application is by the petitioner it is only at the end of the application (Exh.12) that Smt. Pushpaben Chandulal Jaiswal has appended her signature and the Trial Court has found that Smt.Pushpaben has signed as a third party in an application made by the petitioner; that Smt.Pushpaben has not affirmed by way of affidavit that what is stated in the application is true and correct; that in fact affidavit has been sworn only by the petitioner. Further, the Trial Court has held that no documentary evidence has been placed on record to

establish that Smt.Pushpaben is the owner of gold ornaments and the said gold ornaments being muddamal in criminal cases filed against the petitioner the said aspect can be decided on merits only after the evidence is led by the parties when the criminal cases are heard. That, in the circumstances, prayer made by Smt.Pushpaben has been found to be premature by the Trial Court. In relation to the contention that the said gold ornaments of Pushpaben have been seized by the officers of the Income Tax Department with malafide intention, the Trial Court finds that there are no reasons available on record for accepting the said submission; that there is no evidence on record to show any animosity between the officers of the Income Tax Department and the petitioner. Similarly, in relation to the contention of the petitioner that the said gold ornaments have been shown in wealth tax return and accepted by the Income Tax Appellate Tribunal by order dated 29.09.1986, the Trial Court has held that this averment could be decided only when the criminal cases are heard and decided on merits after evidence is led by both the sides. It is further stated that whether the said gold ornaments are to be returned to the petitioner or Smt.Pushpaben or that a direction was required that the same be forfeited by the State can be decided only at the end of the Trial. The Trial Court has accordingly rejected the application with the aforesaid reasons.

6 There being no infirmity in the order of the Trial Court, it is not necessary to interfere with the same and this application is liable to be rejected and is accordingly rejected. Notice is discharged with no order as to costs.

(R.K.Abichandani, J)

(D.A.Mehta, J)

m.m.bhatt